

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SRI LOUISE COLES, et al.,  
Plaintiffs,  
v.  
CITY OF OAKLAND, et al.,  
Defendants.

NO. C03-2961 TEH

ORDER GRANTING IN PART  
AND DENYING IN PART  
MOTIONS FOR SUMMARY  
JUDGMENT OR PARTIAL  
SUMMARY ADJUDICATION

LOCAL 10, INTERNATIONAL  
LONGSHORE AND WAREHOUSE  
UNION, et al.,  
Plaintiffs,  
v.  
CITY OF OAKLAND, et al.,  
Defendants.

NO. C03-2962 TEH

These matters come before the Court on three motions: (1) Defendants' motion for summary judgment against the remaining individual plaintiffs in *Local 10*; (2) Plaintiffs' motion for partial summary adjudication in *Coles*; and (3) Defendants' motion for partial summary adjudication in *Coles*. After carefully considering the parties' written arguments and the record in this case, the Court has determined that oral argument is only necessary on the limited issues of whether or not it was clearly established that the Fourth Amendment applies to the circumstances of this case and, therefore, whether or not Defendants are entitled to qualified immunity on Plaintiffs' Fourth Amendment claims. On all other issues, the Court now rules as follows:

1. The *Local 10* Defendants' motion for summary adjudication of Plaintiffs' privacy claim is GRANTED as unopposed.

1           2. The *Local 10* Defendants' motion for summary adjudication of Plaintiffs' First  
2 Amendment claim is DENIED. As explained in the Court's order granting in part and  
3 denying in part the *Local 10* Defendants' motion for summary judgment against Plaintiff  
4 Local 10, International Longshore and Warehouse Union, disputed issues of material fact  
5 remain on the issue of whether the union member plaintiffs' First Amendment rights were  
6 violated.<sup>1</sup> Similarly, the Court cannot say that it would be impossible for a reasonable jury to  
7 find that Plaintiff Jack Heyman was arrested or subjected to force because of anti-union  
8 animus.

9           3. The *Coles* Defendants' motion for summary adjudication of Plaintiffs' First  
10 Amendment claims is DENIED. The Court cannot say that the evidence, when viewed in a  
11 light most favorable to Plaintiffs, could not support a claim under the First Amendment. Nor  
12 can the Court conclude that Defendants would be entitled to qualified immunity if Plaintiffs'  
13 version of the facts is believed.

14           4. The *Local 10* and *Coles* Defendants' motions for summary adjudication of  
15 Plaintiffs' Fourth Amendment claims are GRANTED as unopposed as to individual  
16 plaintiffs' claims against those individual defendants who did not use or authorize the use of  
17 force against those plaintiffs and who played no role in arresting those plaintiffs. The *Coles*  
18 Plaintiffs specifically do not contest granting summary adjudication to Defendants Poulson,  
19 Hogenmiller, Tracey, Oerlemans, Knight, Romans, Moore, and Fukuda. However, Plaintiffs  
20 in both cases failed to identify any other defendants with specificity, and the parties are  
21 therefore ordered to meet and confer and to file a stipulation and proposed order – one in  
22 *Coles* and one in *Local 10* – regarding which plaintiffs' claims against which individual  
23 defendants should be summarily adjudicated in Defendants' favor on the basis of Plaintiffs'  
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26           <sup>1</sup>Defendants argue that the union member plaintiffs conceded their free speech claim  
27 when they admitted that they were not protesting or engaged in any protest activity.  
28 However, as the Court explained in its order on Defendants' motion against the union  
plaintiff, it remains disputed whether union members were engaged in expressive conduct  
because it is not clear whether an observer would have reasonably understood that the union  
members were intending to communicate respect for the demonstration by standing by.

1 non-opposition. These stipulations and proposed orders shall be filed no later than **Monday,**  
2 **December 12, 2005.**

3         5. The Court finds that there are disputed issues of fact regarding whether the Fourth  
4 Amendment governs Plaintiffs' claims based on the use of force. It remains possible that a  
5 jury could find that Plaintiffs were subjected to a Fourth Amendment "seizure," the contours  
6 of which the Court discussed in its order denying Defendants' motion to dismiss Plaintiffs'  
7 Fourth Amendment claims.<sup>2</sup> Similarly, disputed facts prevent this Court from entering  
8 summary adjudication for either Plaintiffs or Defendants on the question of whether, if  
9 Plaintiffs were "seized," Defendants' use of force was objectively reasonable under the  
10 circumstances. Accordingly, the *Coles* Plaintiffs' motion for summary adjudication of their  
11 Fourth Amendment claims, including their request that the Court find Defendants City of  
12 Oakland, Word, Haw, and Yee liable under the Fourth Amendment and California Civil  
13 Code section 52.1 as a matter of law, is DENIED. The *Local 10* and *Coles* Defendants'  
14 motions are also DENIED to the extent that they rely on these issues.

15         6. The *Local 10* and *Coles* Defendants' motions are also DENIED to the extent that  
16 Defendants argue that they are entitled to qualified immunity if the Fourth Amendment  
17 governs Plaintiffs' claims. Whether it would have been clear to a reasonable officer that his  
18 or her actions violated the Fourth Amendment, if it applies, depends on resolution of  
19 disputed factual issues.

20         7. However, both of Defendants' motions remain under submission on the Fourth  
21 Amendment claims because the Court will entertain oral argument on the limited issues of  
22 whether or not it was clearly established that the Fourth Amendment applies to the  
23 circumstances of this case and, therefore, whether or not Defendants are entitled to qualified  
24 immunity on Plaintiffs' Fourth Amendment claims. The Court will hear such argument at the  
25 scheduled hearing on **December 12, 2005, at 10:00 AM.**

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27         <sup>2</sup>The *Local 10* Defendants argue that the union member plaintiffs' Fourth Amendment  
28 claims are distinct because, unlike the protestors, union members were allowed to stay at the  
Port on the day of the protest. However, it is disputed whether union members were  
subjected to force because they were mistakenly considered to be participants in the protest.

1           8. Because the Court finds that disputed facts remain regarding the reasonableness of  
2 the use of force by Defendants, the Court also DENIES the *Local 10* and *Coles* Defendants'  
3 motions for summary adjudication of Plaintiffs' state-law claims on the basis of immunity  
4 under California Government Code section 820.2.

5           9. The Court need not rule on the parties' objections to evidence because the Court  
6 did not rely on any of the disputed evidence in reaching the above conclusions.

7           Finally, the Court notes the *Local 10* Defendants' contention, which has not been  
8 disputed by Plaintiffs, that only seven individual plaintiffs remain in the *Local 10* case:  
9 Plaintiffs Jack Heyman, Allen Chapman, Christopher Clay, Ernest Evans, Billy Kepo'o,  
10 Lawrence Massey, and Byron Moore. However, the parties do not appear to have filed any  
11 documents resolving the claims of Plaintiffs John Nishinaga, Willow Rosenthal, and Cliff  
12 Close. Nor do the parties appear to have filed stipulations and proposed orders dismissing  
13 the individual officer defendants as to Plaintiffs Scott Fleming and Lawrence Menard, both  
14 of whom accepted Rule 68 offers of judgment. Accordingly, IT IS FURTHER ORDERED  
15 that the parties shall meet and confer on these issues prior to the December 12 hearing and  
16 either (1) provide the Court at the December 12 hearing with docket numbers of the  
17 identified documents if the Court is incorrect and such documents have already been filed or  
18 (2) be prepared to report to the Court, under penalty of perjury, at the December 12 hearing  
19 that the identified documents have been or will be filed on or before **December 12, 2005**, if  
20 the Court is correct and such documents have not already been filed.

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22 **IT IS SO ORDERED.**

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24 Dated: 12/06/05



THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT